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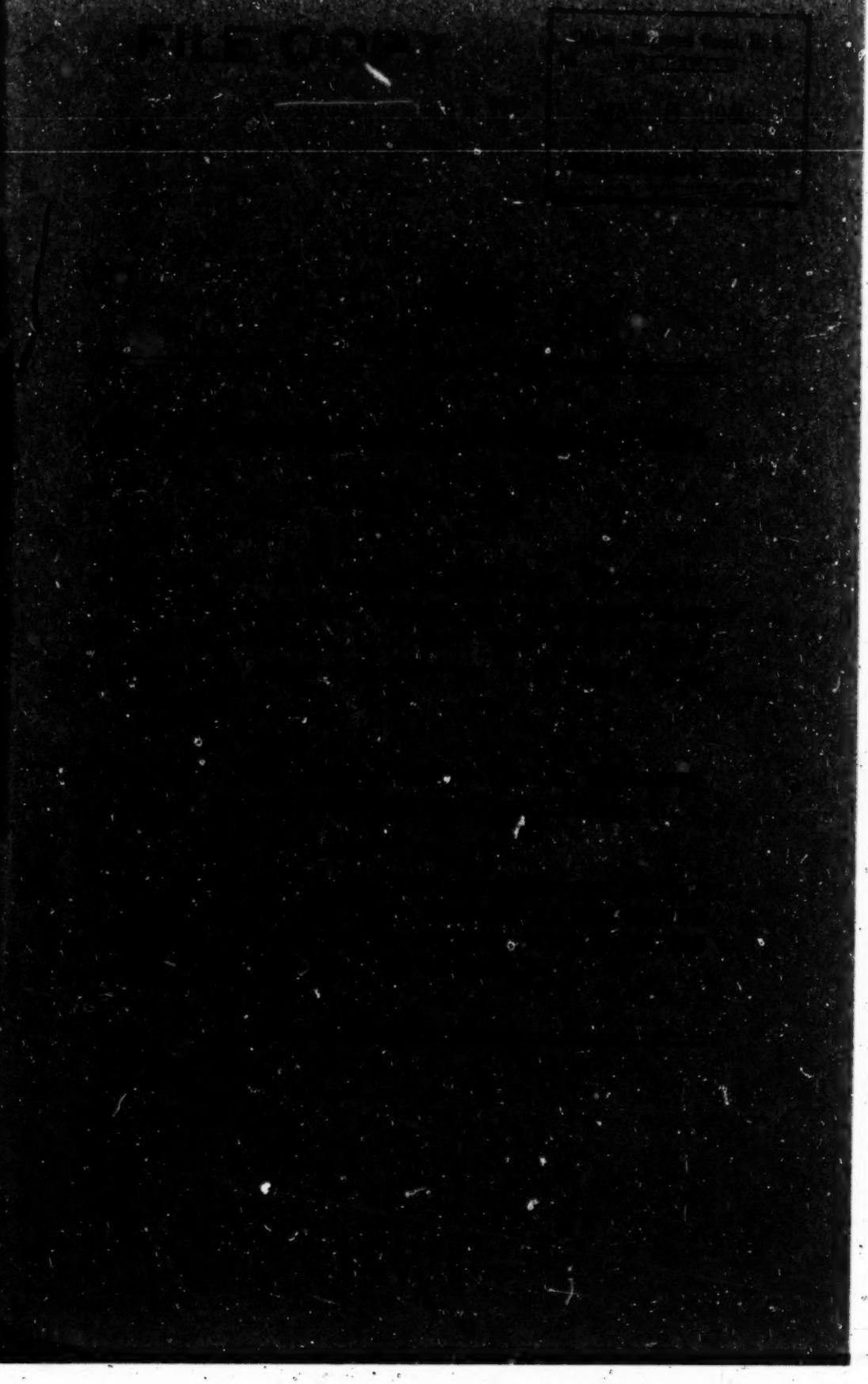

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# INDEX



## CITATIONS

# In the Supreme Court of the United States

OCTOBER TERM, 1939

No. —

RECONSTRUCTION FINANCE CORPORATION, PRUDENCE-BONDS CORPORATION, PRESIDENT AND DIRECTORS OF THE MANHATTAN COMPANY, AND THE MARINE MIDLAND TRUST COMPANY OF NEW YORK, PETITIONERS

*v.*

PRUDENCE SECURITIES ADVISORY GROUP, INDEPENDENT PRUDENCE BONDHOLDERS COMMITTEE, ET AL.

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

The petitioners, Reconstruction Finance Corporation (hereinafter referred to as "RFC"), Prudence-Bonds Corporation (hereinafter referred to as the "New Corporation"), President and Directors of the Manhattan Company, and The Marine Midland Trust Company of New York, respectfully pray that a writ of certiorari issue to review the order or decree of the United States Circuit Court of Appeals for the Second Circuit entered in the above cause on April 23, 1940, dismissing for want

of jurisdiction a large number of appeals from orders making allowances in a reorganization proceeding.

## OPINIONS BELOW

The opinions of the Circuit Court of Appeals for the Second Circuit (R. 319–328)[1] are not yet reported.

## JURISDICTION

The decree of the Circuit Court of Appeals was entered on April 23, 1940 (R. 330–337). The jurisdiction of this Court is invoked under Section 24 (c) of the Bankruptcy Act and under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

## QUESTIONS PRESENTED

Timely notices of appeal from orders making allowances in a reorganization proceeding were filed with the District Court in reliance upon a decision of the court below denying an application for leave to appeal on the ground that such appeals lay as a matter of right and therefore should be taken in the manner here followed. These appeals were heard on the merits and were submitted to the court for decision. Thereafter, this Court resolved a conflict between the decision relied on in taking the appeals and a later decision of another court, by

[1] Record references are to pages of the Proposed Record, submitted herewith on motion of the petitioners for leave to proceed on an abbreviated printed record. See *infra*, pp. 17–22.

holding that appeals from orders making allowances were discretionary with the Circuit Court of Appeals. The questions are:[2]

1. Was the failure to apply to the court below for leave within the appeal period a jurisdictional defect requiring the dismissal of the appeals?

2. Was the court below compelled, under Section 250 of the Bankruptcy Act, to dismiss the appeals because application for leave to appeal was not made within the appeal period?

3. Was the court below compelled to give retroactive effect to the subsequent decision of this Court and to dismiss the appeals for want of jurisdiction?

## STATUTE INVOLVED

The pertinent provisions of the Bankruptcy Act, as amended, are found in the Appendix, *infra*, pp. 15–16.

## STATEMENT

In the course of the reorganization of Prudence-Bonds Corporation, under Section 77B of the Bankruptcy Act, the District Court by 16 orders awarded allowances in excess of $1,105,000 (R. 1–49; 166–182); payable from trust funds securing bonds of the Debtor held by over 35,000 bondholders

[2] An additional question which will be urged in the argument on the merits is whether, in any event, the court below had jurisdiction over certain of the appeals in view of its order consolidating them and ordering them to be heard on the original papers of the District Court, which was made upon an application filed within the time provided for taking appeals.

(R. 73, 77, 199). By some of these orders, in respects not involved in this petition, the District Court also denied various applications for allowances. This petition involves 54 appeals relating to the former orders.[3]

The appeals were all taken by filing notices of appeal in the District Court (R. 92–160; 189; 207–221; 301–302). This was in reliance upon the controlling decision of the court below in *London* v. *O'Dougherty*, 102 F. (2d) 524, which denied an application for leave to appeal from reorganization

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[3] RFC and the New Corporation appealed from such orders (R. 92–141; 189, 207) on the ground that many of the awards and the total cost of reorganization were grossly excessive (R. 61, 78, 200, 247). They were permitted by the District Court to take the appeals (R. 84, 88, 188, 206) because the 77B trustees of the Debtor took the position that they had been superseded by the New Corporation and did not consider it their duty to oppose the applications (R. 83). The interests of RFC, an intervenor, in the allowances are (a) its unpaid balance of $11,800,000 on a defaulted loan to The Prudence Company, Inc., holder of $1,910,300 of the subordinated bonds of the Debtor, (b) its holdings, as owner or pledgee, of all the stock of Realty Associates, Inc., and Realty Associates Securities Corporation, which held $1,300,000 of the Debtor's bonds, and of all the stock of the Debtor, and (c) the right given to the holder of the Debtor's stock under the general plan of reorganization to purchase shares in the reorganized company (R. 67–68).

The New Corporation has succeeded to all the rights of the Debtor's trustees in the trust funds securing the bonds (R. 75, 229).

President and Directors of the Manhattan Company and The Marine Midland Trust Company of New York appealed from the amounts awarded them as well as from the provision deferring payment of part thereof (R. 216, 221).

allowances on the ground that such leave was unnecessary.

Some of the appeals were argued in May, 1939, the balance in February, 1940 (R. 307, 310). After hearing argument on the first group of appeals the court below reversed that part of one of the orders appealed from whereby the District Court had deferred consideration of certain applications for allowances. Pending the further action which it directed the District Court to take, the court below reserved decision on the remaining appeals (R. 307–308). After the District Court had made a further order fixing additional allowances, but withholding payment of the major portion, appeals were taken from that order by the petitioners and others (R. 189, 207–222), and this group of appeals was likewise heard by the court below (R. 310).

On December 4, 1939, prior to the decision on the merits in any of the appeals, the Prudence Securities Advisory Group and its attorneys moved to dismiss the appeals of RFC and the New Corporation from the orders awarding allowances to the moving parties, upon the ground that no petition for leave to appeal had been filed in the Circuit Court of Appeals (R. 276–279). The motion was denied by order of December 7, 1939 (R. 279–280).

This Court in *Dickinson Industrial Site, Inc.* v. *Cowan*, No. 386, this Term,* held on March 11, 1940,

* The Circuit Court of Appeals for the Seventh Circuit announced its decision in the *Dickinson* case on May 22, 1939. 104 F. (2d) 771.

that under Section 250 of the Bankruptcy Act appeals from allowances in reorganization proceedings could be heard only in the discretion of the appellate court. After this decision, a motion for reargument of the motion to dismiss such appeals of RFC and the New Corporation was granted and heard, together with a motion to dismiss similar appeals made by another committee and its attorneys (R. 287–300).

The motions to dismiss were granted by a divided court on April 5, 1940. The court also dismissed the remainder of the appeals on its own motion (R. 326).

### SPECIFICATION OF ERRORS TO BE URGED

The court below erred: (1) in dismissing the appeals for want of jurisdiction; (2) in holding that the leave required by Section 250 cannot be granted unless applied for within the appeal period; (3) in giving retroactive effect to the *Dickinson* decision; and (4) in failing to view as granting leave its action consolidating a number of the appeals and ordering them heard on the original papers.

### REASONS FOR GRANTING THE WRIT

1. Both the majority and dissenting opinions below recognize that the decision is in substantial conflict with two decisions of the United States Circuit Court of Appeals for the Fifth Circuit, in *Baxter* v. *Savings Bank*, 92 F. (2d) 404, and *Wilson* v. *Alliance Life Ins. Co.*, 102 F. (2d) 365 (R. 323–326).

In those cases appeals erroneously taken as of right under the former Section 24 (a) of the Bankruptcy Act, without obtaining leave of the appellate court, were considered as though taken under Section 24 (b) and allowed by the appellate court after expiration of the appeal period.

2. The decision below presents an important question of appellate procedure in bankruptcy and reorganization proceedings. Until this question is settled by this Court, substantial confusion will arise in a large class of appeals from orders in bankruptcy and corporate reorganization proceedings.

The decision below is not applicable to Section 250 alone but interjects jurisdictional flaws in any case where there is doubt whether the appeal lies as of right or in the discretion of the appellate court. Thus, there is already substantial doubt whether leave of the appellate court is not required in a large class of appeals under Section 24 (a) from orders involving no specific sums of money.[5] Two Courts of Appeals have decided that application for leave to appeal is unnecessary in such cases. *Robertson* v. *Berger*, 102 F. (2d) 530 (C. C. A. 2d); *In re Winton Shirt Corporation*, 104 F.

[5] Examples are: Orders or decrees relating to jurisdiction, stays, contempts, injunctions, fines, imprisonment, appointment or removal of trustees, granting or denying discharges, dismissal of reorganization proceedings, confirmation of plans, directing liquidation, opening or closing meetings of creditors, and examinations under Section 21 (a).

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(2d) 777 (C. C. A. 3d). But previously one of those Circuits had reached the opposite conclusion (*In re Winton Shirt Corporation, supra,* decision of May 1, 1939, later withdrawn and not reported). If the decision of the court below is to stand, no appellant can safely rely on any decision fixing the proper method of appeal until this Court decides the basic jurisdictional question involved. On the one hand, adequate protection could be obtained only by taking appeals, both by leave of the appellate court and by filing a notice of appeal in the District Court. On the other hand, decisions such as *London* v. *O'Dougherty,* 102 F. (2d) 524 (C. C. A. 2d), preclude that protection by denying applications for leave on the ground that they are unnecessary.

3. The court below felt that the result it reached was required by the decision of this Court in *Dickinson Industrial Site, Inc.* v. *Cowan,* No. 386, October Term, 1939, and by an analysis of the "judicial history as to the interpretation of the 1926 amendment of Section 24 (b)" (R. 322). But the *Dickinson* decision merely affirmed a decision holding that appeals from orders on allowances could be heard only in the discretion of the appellate court. This Court did not hold that the failure to apply for such discretionary leave within the time to take appeals would result in a jurisdictional defect, nor did it hold that Section 250 of the Bankruptcy Act required that such leave be sought within the time

to take appeals, where as here timely notices of appeal had been filed in the District Court.

Certainly the language of Section 250 compels no such a result. That section provides "Appeals may be taken * * * and may, in the manner and within the time provided for appeals by this Act, be taken to and allowed by the circuit court of appeals * * *." Clearly, an appeal need not be "allowed" within the appeal period, and nothing in these words declares that, after an appeal has been taken in the form and manner of an appeal as required by Section 24 (b) of the Bankruptcy Act, the appellate jurisdiction in bankruptcy conferred by Section 24 (a) of the Bankruptcy Act is divested if leave to appeal is not sought within the appeal period.[6] The ambiguity of Section 250 must be resolved in the light of the plain Congressional intention to eliminate the jurisdictional entrapments which have confused the history of bankruptcy appeals.[7]

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[6] General appellate jurisdiction in bankruptcy is conferred only by Section 24, which is made applicable as a general matter to appeals in reorganization proceedings by Section 121. See Senate Report No. 1916, 75th Cong., 3d Sess., p. 25.

[7] Thus, the amendments as passed by the House contained a specific provision that failure to obtain allowance of an appeal did not defeat jurisdiction when the appellant had erroneously taken his appeal as of right. The Senate Judiciary Committee eliminated this provision, not because it felt such defects to be jurisdictional, but because it felt such a provision was an unnecessary caution after it had accomplished the same result by taking the more inclusive step of practically abolishing the distinction between appeals as of right and those in the discretion of the appellate court (S. Rept. No. 1916, *supra*, p. 4).

Moreover, under General Order in Bankruptcy No. 36, the new Federal Rules of Civil Procedure are applicable to appeals in bankruptcy and reorganization proceedings, and it is expressly provided in Rule 73 (a) that after an appeal is taken within the time provided for taking appeals by the filing of a notice of appeal in the District Court, failure to take any of the further steps to perfect such appeal shall not affect its validity.[8]

Even under the earlier provisions of the Bankruptcy Act this Court ruled in *Taylor* v. *Voss*, 271 U. S. 176, that, where the scope of review is not increased thereby, an error in selecting the method of appeal will be deemed merely a technical defect insufficient to defeat review.[9] That decision must apply with added force after the recent amendments.

4. But even if the method of appeal adopted in this case would preclude review by the appellate court in appeals taken after the decision in the *Dickinson* case, it by no means follows that such a result is necessary here.

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[8] The rule of *Shulman* v. *Wilson-Sheridan Hotel Co.*, 301 U. S. 172, that appeals from allowance orders were discretionary with the appellate court, was expressly carried into the new amendments. *Dickinson Industrial Site, Inc.* v. *Cowan*, *supra*. But it by no means follows that the older rule as to the jurisdictional consequences of a technical error in taking the appeal was also adopted.

[9] In *Shulman* v. *Wilson-Sheridan Hotel Co.*, 301 U. S. 172, unlike the *Taylor* case and unlike the present case, the erroneous method of appeal would have resulted in enlarging the scope of the review.

In this case appeals were taken and argued, briefs were filed, and the case was under submission at the time of the decision of this Court in the *Dickinson* case. Moreover, at the time that most of the appeals were taken to the court below, the *London* case stood without conflict as the sole guide to litigants. We submit that the court below was not compelled to apply the *Dickinson* case retroactively to the instant proceedings. The holding in the *Dickinson* case, that appeals from orders on allowance could be heard only in the discretion of the appellate court, is insufficient reason to sweep away the labor and expense of litigants incurred in reliance on a controlling decision of the court to which the appeal was to be taken. Only a rigid rule requiring that every decision of this Court be given an unrestrained retroactive application would justify the action of the court below. That there is no such undeviating requirement is indicated by *Chicot County District* v. *Bank*, 308 U. S. 371, 374, where, in considering the effect of a decision against the constitutionality of a federal statute, the Court stated:

> * * * it is manifest from numerous decisions that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified.

It is submitted that the instant case presents a clear case where equity requires that the retroactive application of the *Dickinson* case be limited. Several of the state courts have ruled that, even in

questions of jurisdiction, an overruling decision need not be given retroactive application.[10] *State ex rel. Department Stores Co.* v. *Haid*, 327 Mo. 567, 586; *Falconer* v. *Simmons*, 51 W. Va. 172, 176–179; see *Jones* v. *Woodstock Iron Co.*, 95 Ala. 551, 563; *Kelley* v. *Rhoads*, 7 Wyo. 237, 279; cf. *Harbert* v. *Railroad Co.*, 50 W. Va. 253, 255–256. We cannot believe that an orderly administration of justice requires a result so shocking as to destroy a right to appeal which was secured through the only method possible at the time the appeal was taken.[11]

5. The awards of compensation are so substantial and affect so large a number of bondholders that it is of general interest that the court below be not deprived of its power to pass upon them.

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[10] The authorities relating to this question are collected in the memorandum filed by the Government in response to the petition for rehearing in *Helvering* v. *Gerhardt*, 304 U. S. 405, 305 U. S. 669, Nos. 779–781, October Term, 1937.

[11] *Alaska Packers* v. *Pillsbury*, 301 U. S. 174, relied on by the court below, does not compel that result. There the appellate court, although the statute specifically provided otherwise, made a rule of court that appellants in admiralty cases need not have their appeals allowed *by the District Court*. It thus attempted to deprive the District Court of a right given it by statute, and this Court held that an appeal taken without allowance of the District Court must be dismissed. Here, however, by the *London* decision the appellate court announced that all applications to it for leave were unnecessary. Its right to make that decision, even although it be later overruled, cannot be questioned. Thus the court itself renounced any discretion afforded to it by the statute to allow appeals which it was vested with jurisdiction to hear.

In the circumstances of this case, such a result would be a serious reproach to the judicial machinery. As was said by Judge Hand, dissenting below (R. 327):

> The appeals here involve orders fixing compensation to the aggregate of hundreds of thousands of dollars. There is serious dispute both over the denial of compensation to some of the parties and over the amounts allowed to others. The awards affect great numbers of holders of participation certificates in one of the most extensive mortgage guaranty enterprises in New York. If a review of the orders may not be had the failure to obtain it will not be due to any neglect of the parties, but solely to their inevitable reliance upon our decision in *London* v. *O'Dougherty*, 102 F. (2d) 524, which controlled the practice in this court until it was held erroneous by the Supreme Court in *Dickinson Industrial Site, Inc.*, v. *Cowan*, handed down on March 11, 1940.

## CONCLUSION

Wherefore, it is respectfully submitted that this petition for a writ of certiorari should be granted [12]

[12] Since the court below refused to take jurisdiction, its ruling seems also to present an appropriate occasion for an application for a writ of mandamus. See *Ex parte Parker*, 120 U. S. 737; *Parker, Petitioner*, 131 U. S. 221; *Ex parte Harley-Davidson Motor Co.*, 259 U. S. 414. But, since review by writ of certiorari seems to afford an adequate remedy, it seems unnecessary, at least at this juncture, to pursue the more unusual remedy of mandamus.

to review the order or decree of the court below so far as it dismisses the appeals taken by petitioners.

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MAY 1940.

## APPENDIX

The Bankruptcy Act, as amended by the Act of June 22, 1938 (c. 575, 52 Stat. 840; 11 U. S. C. Supp. V, Secs. 47, 48, 521, 650):

SEC. 24. JURISDICTION OF APPELLATE COURTS.—a. The Circuit Courts of Appeals of the United States and the United States Court of Appeals for the District of Columbia, in vacation, in chambers, and during their respective terms, as now or as they may be hereafter held, are hereby invested with appellate jurisdiction from the several courts of bankruptcy in their respective jurisdictions in proceedings in bankruptcy, either interlocutory or final, and in controversies arising in proceedings in bankruptcy, to review, affirm, revise, or reverse, both in matters of law and in matters of fact: *Provided, however,* That the jurisdiction upon appeal from a judgment on a verdict rendered by a jury, shall extend to matters of law only: *Provided further,* That when any order, decree, or judgment involves less than $500, an appeal therefrom may be taken only upon allowance of the appellate court.

b. Such appellate jurisdiction shall be exercised by appeal and in the form and manner of an appeal.

c. The Supreme Court of the United States is hereby vested with jurisdiction to review judgments, decrees, and orders of the Circuit Courts of Appeals of the United States and the United States Circuit Court of Appeals for the District of Columbia in pro-

ceedings under this Act in accordance with the provisions of the laws of the United States now in force or such as may hereafter be enacted.

SEC. 25. PRACTICE ON APPEALS.—a. Appeals under this Act to the Circuit Courts of Appeals of the United States and the United States Circuit Court of Appeals for the District of Columbia shall be taken within thirty days after written notice to the aggrieved party of the entry of the judgment, order or decree complained of, proof of which notice shall be filed within five days after service or, if such notice be not served and filed, then within forty days from such entry.

* * * * *

SEC. 121. Where not inconsistent with the provisions of this chapter, the jurisdiction of appellate courts shall be the same as in a bankruptcy proceeding.

* * * * *

SEC. 250. Appeals may be taken in matters of law or fact from orders making or refusing to make allowances of compensation or reimbursement, and may, in the manner and within the time provided for appeals by this Act, be taken to and allowed by the circuit court of appeals independently of other appeals in the proceeding, and shall be summarily heard upon the original papers.

# In the Supreme Court of the United States

OCTOBER TERM, 1939

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No. —

RECONSTRUCTION FINANCE CORPORATION, PRUDENCE-BONDS CORPORATION, PRESIDENT AND DIRECTORS OF THE MANHATTAN COMPANY, AND THE MARINE MIDLAND TRUST COMPANY OF NEW YORK, PETITIONERS

*v.*

PRUDENCE SECURITIES ADVISORY GROUP, INDEPENDENT PRUDENCE BONDHOLDERS COMMITTEE, ET AL.

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**MOTION TO DISPENSE WITH PRINTING AND SERVICE OF PORTIONS OF RECORD**

Counsel for the petitioners in this case file herewith their petition for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit, accompanied by the original papers constituting the record of the proceedings in the case in the District Court, together with a certified copy of the record of the proceedings in the Circuit Court of Appeals. The record of original papers of the District Court was lodged with the Clerk of this Court pursuant to an order of the Presiding Judge in the Circuit Court of Appeals for the Second Circuit, entered on April 22, 1940.

1. The nature of this case and the questions presented by the petition for a writ of certiorari have been set forth in the foregoing petition for a writ of certiorari.

2. The order of the Circuit Court of Appeals sought to be reviewed enumerates the papers which were considered by the court in dismissing the appeals (R. 331–336). Petitioners now seek to be relieved of printing that part of the record of the proceedings in the District Court which was not considered by the Circuit Court of Appeals in dismissing the appeals as that part is not necessary to a consideration of the questions presented by the petition for a writ of certiorari herein.

The consolidated record consists of 25 separate volumes of original papers and exhibits and contains approximately 17,000 pages. Petitioners believe that no papers contained in the record of proceedings in the District Court other than those recited in the order of dismissal are required for a consideration of the questions presented by the petition for a writ of certiorari.

Petitioners have received an estimate that it would cost at least $27,500 to print the record of the proceedings in the District Court.

3. Petitioner Reconstruction Finance Corporation, on April 16, 1940, mailed, to all parties affected by the dismissal of the appeals herein, a proposed stipulation that the record to be printed in this Court consist of the following: (a) the papers enumerated by the court below as those which it considered in dismissing the appeals; (b) the majority and dissenting opinions in the Circuit Court of Appeals; (c) the order dismissing the ap-

peals; (d) the order of the Circuit Court of Appeals staying the mandate; (e) the proposed stipulation; and (f) the Clerk's certificate. After the order of dismissal was signed, conformed copies were served on all interested parties. The allowances which were the subject of the appeals were awarded to over 50 different parties, committee members, attorneys, or accountants. A large number of such parties signed the stipulation in the form originally submitted. But various objections were immediately made by several interested parties to signing the proposed stipulation or to signing any stipulation respecting the record to be printed in this Court. Since that time petitioners have persistently and unsuccessfully endeavored to secure a stipulation from all interested parties.

A stay of the mandate on the decision of the Circuit Court of Appeals was promptly obtained by appellants. If the stay is to be continued pending application for a writ of certiorari, it will be necessary under the terms of the order granting the stay to file in the Circuit Court of Appeals within thirty days from the date of that order a certificate of the Clerk of this Court showing the filing of the petition for a writ of certiorari and proof by affidavit of compliance with Rule 38 (3) of the Rules of this Court. In the circumstances, petitioners believe that it is impossible within the time so limited to obtain a stipulation from all interested parties to dispense with the printing of portions of the record which are not necessary for a consideration of the questions presented by the petition for a writ of certiorari. Moreover, it seems unlikely that such a stipulation could be ob-

tained from all of the parties concerned within any period of time.

4. Petitioners have had printed a proposed record which includes all the papers enumerated in paragraph 3, above, except the order staying the mandate, but which omits those papers contained in the proceedings of the District Court which are not included among the papers upon which the order of dismissal was made. Petitioners are serving a copy of this proposed record on each of the respondents.

Petitioners move that they be relieved from printing any papers contained in the record of the proceedings of the District Court which are not included among the papers upon which the order of dismissal was made and that the case be considered upon the printed record, omitting all such unnecessary papers, filed herewith.

If any of the respondents object to consideration of the case on the merits upon a printed record so limited, we suggest that they include in their response to the petition for a writ of certiorari a specification of the additional matter which they believe should be included in the printed record, together with an explanation of its materiality to the issues presented by the petition. If this Court determines that any additional matter is material it could order the printing of such matter. Alternatively, the Court could direct that all the matter specified by respondents, if not unreasonably voluminous, be printed with costs to petitioners to be paid by the respondent or respondents who cause portions of the record to be printed which the Court should later determine to be unnecessary.

5. Section 250 provides that appeals from allowance orders "shall be summarily heard upon the original papers." Petitioners have been unable to file a certified transcript of the record of the proceedings in this case, in accordance with this Court's requirements, if they are applicable under Section 250. It has been impossible for petitioners to prepare a transcript of the record of the proceedings in the District Court for certification and filing in this Court for the reason that there are no copies of many voluminous exhibits to various petitions for allowances which form a large part of the record. In order to make copies of the missing papers there would be involved many weeks of delay and very substantial expense in having them first copied off in the Clerk's office and subsequently transcribed. In these circumstances, it is impossible because of the great hardship, expense, and time involved, for appellants to comply with the requirements of this Court with respect to the filing of a certified transcript of the record of the proceedings in the case. In lieu thereof petitioners have filed the original papers constituting the record of the proceedings in the District Court and a certified copy of the record of the proceedings in the Circuit Court of Appeals.

WHEREFORE, it is prayed: (a) That the Court rule that the accompanying petition for writ of certiorari is properly filed upon the record consisting of the original papers before the District Court and a certified copy of the record of proceedings in the Circuit Court of Appeals now on file in this Court; (b) that it consider the case upon the required number of printed copies of the record described in

paragraph 4 hereof and filed herewith; and (c) that it rule that the service aforementioned which petitioners are now making upon respondents of copies of this motion, the petition for writ of certiorari herein and the proposed printed record constitutes sufficient compliance with the rules of this Court.

Respectfully submitted.

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MAY 1940.

U. S. GOVERNMENT PRINTING OFFICE: 1940

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